

Virginia Regulatory Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	State Air Pollution Control Board
Regulation Title:	Regulation for Mobile Sources
Primary Action:	9 VAC 5-180-10 et seq.
Secondary Action(s):	9 VAC 5-40-5650 et seq. (repeal); 9 VAC 5-91-190 and -210
Action Title:	Mobile Sources (Rev. I00)
Date:	

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) for more information.

Purpose *

Please describe the subject matter and intent of the planned regulation.

The purpose of the proposed action is (1) to adopt a new regulation that meets current air quality needs and (2) to repeal the existing regulation because certain of its provisions have been determined to be no longer required by federal mandate and no longer essential to protect the health or welfare of citizens. This determination was made pursuant to the review of existing regulations mandated by Executive Order 15(94).

Statutory Authority

Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific regulation contemplated.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare.

Need *

Please provide an explanation of the need for the contemplated regulation and potential consequences that may result in the absence of the regulation. Also set forth the specific reasons the agency has

determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens or would be essential for the efficient and economical performance of an important governmental function. Include a discussion of the problems the regulation's provisions are intended to solve.

Rule 4-41 is no longer essential (i) to protect the health or welfare of citizens or (ii) for the efficient and economical performance of an important governmental function. An explanation as to how this conclusion was reached is set forth below.

The regulation is no longer needed for air quality planning purposes. The regulation was adopted in order to implement the policy set forth in the Virginia Air Pollution Control Law and to fulfill the Commonwealth's responsibilities under the Federal Clean Air Act to provide a legally enforceable State Implementation Plan for the control of criteria pollutants. These statutes still remain in force, but the provisions that initiated adoption of the regulation have changed.

Analysis reveals that the regulation is not consistent with applicable state and federal regulations, statutory provisions, and judicial decisions. Factors and circumstances (federal statutes, original intent, state air quality program and air pollution control methodology and technology) which justified the initial issuance of the regulation have changed to a degree that would justify a change to the basic requirements of the regulation.

Federal guidance on states' approaches to air pollution control has varied considerably over the years, ranging from very general in the early years of the Clean Air Act to very specific in more recent years. This regulation, Rule 4-41, was adopted in 1972, when no detailed guidance existed. Therefore, the legally binding federal mandate for this regulation is general, not specific, consisting of the Clean Air Act's broad-based directive to states to meet the air quality standard for particulate matter, which is emitted by mobile sources.

Since Rule 4-41 was adopted in 1972, important changes have been made to the State Implementation Plan which have resulted in significantly better control of the emissions this regulation was designed to limit. For instance, under the 1990 amendments of the Clean Air Act, most motor vehicles in Virginia's metropolitan urban areas (one and a quarter million vehicles out of the statewide total of five million) are now subject to inspection and maintenance (I/M) programs, which will provide for a higher level of stringency for control of visible emissions and other pollutants than the level provided for by Rule 4-41. In addition, the enforcement of anti-tampering prohibitions is accomplished through statewide safety inspections carried out by the State Police. (The anti-tampering provisions of Rule 4-41 merely duplicate those of section 46.2-1048 of the Code of Virginia.) In light of these newer and more effective controls, the regulation should be replaced. The replacement regulation (9 VAC 5 Chapter 180) will focus on the control of visible emissions from motor vehicles, which are the major concern of the general public. It contains provisions addressing anti-tampering, visible emission standards, commercial and public service motor vehicles, and export/import of motor vehicles.

Potential Issues *

Please supply a statement delineating any potential issues that may need to be addressed as the regulation is developed.

The potential issues that need to be addressed as the regulation is developed are as follows.

1. Repeal the existing rule for Emission Standards for Mobile Sources, Article 41 (9 VAC 5-40-5650 et seq.) of 9 VAC 5 Chapter 40 because certain of its provisions have been determined to be no longer required by federal mandate and no longer essential to protect the health or welfare of citizens.
2. Promulgate a new Regulation for Mobile Sources, 9 VAC 5 Chapter 180 (9 VAC 5-180-10 et seq.) which meets current air quality needs.
3. Amend the existing Regulation for the Control of Motor Vehicle Emissions in the Northern Virginia Area, 9 VAC 5 Chapter 91 (9 VAC 5-91-190 and -210) to render it consistent with the new regulatory provisions developed pursuant to issue 2 above.

Alternatives *

Please describe the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the proposal that have been considered and will be considered to meet the need, and the reasoning by which the agency has rejected any of the alternatives considered.

Alternatives to the proposed regulation amendments are being considered by the Department. The Department has tentatively determined that the fourth alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulatory action. The alternatives being considered by the Department, along with the reasoning by which the Department has rejected any of the alternatives being considered, are discussed below.

1. Take no action to amend Rule 4-41. This option was not chosen for the reason specified below in 4.
2. Repeal Rule 4-41. This option was not chosen because citizens continue to register complaints about visible emissions from motor vehicles. The provisions addressing this problem should therefore be retained.
3. Repeal or amend Rule 4-41 and develop a model ordinance which local governments may adopt if they wish to implement a control program similar to that provided by Rule 4-41. This was done with Rule 4-40 (open burning); however, there are

important differences between the two programs. Before the deregulation of open burning, many local governments already had sufficient and experienced staff capable of overseeing an open burning control program. But virtually no local government has any staff with sufficient experience or expertise to oversee a mobile source control program. To oversee such a program requires considerably more technical skill and resources than does an open burning control program. For instance, a mobile source program requires annual training in the evaluation of visible emissions and in the ability to determine whether air pollution control equipment has been tampered with. Most local governments do not have the funding or staff necessary to enforce such a control program. For these reasons, this option was not chosen.

4. Replace Rule 4-41 with more limited provisions. This option was chosen because the regulation is no longer needed for air quality planning purposes. Since the adoption of Rule 4-41, changes to the State Implementation Plan have resulted in more effective methods to control some of the emissions the regulation was designed to limit. Nonetheless, certain provisions need to be retained, as explained above in 2.

Public Participation *

Please indicate the nature of the comments the Department is soliciting pursuant to this notice and whether a public meeting is to be held to receive comments on this notice. If a public meeting is to be held, indicate where information on the public meeting (i.e. date, time, and place) may be found. Indicate whether it is the Department's intent to hold at least one public hearing on the proposed regulation after it is published in the Virginia Register.

The Department is soliciting comments on (i) the intended regulatory action, to include ideas to assist the Department in the development of the proposal, and (ii) the costs and benefits of the alternatives stated in this notice or other alternatives. All comments must be received by the Department by 4:30 p.m. on the first business day after public meeting (see information below) in order to be considered. It is preferred that all comments be provided in writing to the Department, along with any supporting documents or exhibits; however, oral comments will be accepted at the meeting. Comments may be submitted by mail, facsimile transmission, e-mail, or by personal appearance at the meeting, but must be submitted to Kathleen Sands, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia, 23240 (e-mail: krsands@deq.state.va.us) (fax number: 804-698-4510). Comments by facsimile transmission will be accepted only if followed by receipt of the signed original within one week. Comments by e-mail will be accepted only if the name, address and phone number of the commenter are included. All testimony, exhibits and documents received are a matter of public record. Only comments (i) related to the potential issues, alternatives, and costs and benefits (see supporting information below) as specified in this notice and (ii) provided in accordance with the procedures specified in this notice will be given consideration in the development of the proposed regulation amendments.

A public meeting will be held by the Department to receive comments on and to discuss the intended action. Information on the date, time, and place of the meeting is published in

the Calendar of Events section of the Virginia Register. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

After publication in the Virginia Register of Regulations, the Department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Ad Hoc Advisory Group *

Please indicate the extent to which the participatory approach will be used in the development of the proposed regulation. Indicate whether the Department is will be using an ad hoc advisory group in the development of the proposal.

The Department is soliciting comments on the advisability of forming an ad hoc advisory group, utilizing a standing advisory committee or consulting with groups or individuals registering interest in working with the Department to assist in the drafting and formation of any proposal. The primary function of any group, committee or individuals that may be utilized is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Any comments relative to this issue must be submitted to the agency contact in writing by 4:30 p.m. the last day of the comment period.

Legal Requirements

Please identify the state and/or federal source of the legal requirements that necessitate promulgation of the contemplated regulation. The discussion of these requirements should include a description of their scope and the extent to which the requirements are mandatory or discretionary. Full citations for the legal requirements and, if available, web site addresses for locating the text of the cited legal provisions should be provided.

Federal Requirements

Federal Clean Air Act (CAA):

<http://www.epa.gov/ttn/oarpg/gener.html>

Code of Federal Regulations (CFR):

<http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html>

Federal Register (FR):

http://www.gpo.gov/su_docs/aces/aces140.html

Section 110(a) of the Clean Air Act (CAA) mandates that each state adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following:

(1) establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the CAA, including economic incentives such as fees, marketable permits, and auctions of emissions rights;

(2) establish schedules for compliance; and

(3) prohibit emissions which would contribute to nonattainment of the standards or interference with maintenance of the standards by any state.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, including those summarized below.

Subpart G (Control Strategy) specifies the description of control measures and schedules for implementation, the description of emissions reductions estimates sufficient to attain and maintain the standards, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart K (Source Surveillance) specifies procedures for emissions reports and record-keeping, procedures for testing, inspection, enforcement, and complaints, transportation control measures, and procedures for continuous emissions monitoring.

Subpart L (Legal Authority) specifies the requirements for legal authority to implement plans.

Section 51.230 under Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

(1) adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;

(2) enforce applicable laws, regulations, and standards, and seek injunctive relief;

(3) abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;

(4) prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard;

(5) obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require record-keeping and to make inspections and conduct tests of air pollution sources;

(6) require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and

(7) make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 under Subpart L requires the identification of legal authority as follows:

(1) the provisions of law or regulation which the state determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and

(2) the plan must show that the legal authorities specified in this subpart are available to the state at the time of submission of the plan.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; 4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.